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Governor

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Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

May 18, 2010

CERTIFIED RETURN RECEIPT  
7004 1160 0003 0190 4352

Todd Wilhite  
Wall and Rock, Inc.  
3651 North 100 East, Suite 300  
Provo, Utah 84064

Subject: Proposed Assessment for State Cessation Order No. CO-2010-41-01, Wall and Rock, Unpermitted Mine, S/039/0027, Sanpete County, Utah.

**Response Due By: 30 Days of Receipt**

Dear Mr. Wilhite:

Please read this letter thoroughly and contact me as soon as possible if you have questions. I can be reached at 801-538-5310.

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Paul B. Baker, on April 13, 2010. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$4,950.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'Fact of the Violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an Informal Conference within thirty 30 days of receipt of this letter.

The informal conference will be conducted by a Division-appointed Conference Officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty

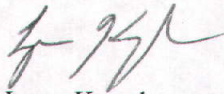


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assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting both a review of the fact of violation, and the proposed penalty, the assessment conference will be scheduled immediately following the review of the fact of the violation.

**If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by June 17, 2010).** Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,



Lynn Kunzler  
Assessment Officer

LK:pb

Enclosure: Proposed assessment worksheet

cc: Vicki Bailey, Accounting  
Vickie Southwick, Exec. Sec.

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**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Walls and Rock PERMIT S/039/0027 (unpermitted)  
NOV / CO # MC-2010-41-01  
ASSESSMENT DATE May 17, 2010  
ASSESSMENT OFFICER Lynn Kunzler

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today=s date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
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<u>none</u>	<u></u>	<u></u>
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**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

**A. EVENT VIOLATION (Max 45 pts.)**

1. What is the event which the violated standard was designed to prevent?  
Injury to the Public, Conducting Mining Operations without appropriate approvals, and Environmental Harm
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

The event occurred, therefore 20 points assigned.



3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

It is not known how long the operator had been operating, but it appeared to have been about a month or two. 17 acres had been affected by this operation. Had the operation not been found by DOGM, the operation would likely have continued to grow. Points were therefore assigned to the upper half of the range.

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

This section does not apply.

**PROVIDE AN EXPLANATION OF POINTS:**

TOTAL SERIOUSNESS POINTS (A or B) 40

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation, which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 25

**PROVIDE AN EXPLANATION OF POINTS:**

The operator was aware of the need for obtaining a permit from DOGM as evidenced by other similar operations that were permitted. While not at this site, the operator had been cited for the same reasons at a nearby site. Points are therefore assigned in the upper half of the range.

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

While the operator began abatement shortly after the cessation order was issued, the cessation order has not been fully abated or terminated. Therefore Good Faith Points are not considered for this proposed assessment.

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT



Easy Abatement Situation

- X Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- X Rapid Compliance -1 to -10  
(Permittee used diligence to abate the violation)
- X Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- X Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- X Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- X Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

V. ASSESSMENT SUMMARY (R647-7-103.3) CESSATION ORDER # MC-2010-41-01

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>40</u>
III.	TOTAL NEGLIGENCE POINTS	<u>25</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>65</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$4,950.00</u></b>